IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

EUGENE BENAVENTE GOMIA,
Defendant-Appellant.

Supreme Court Case No. CRA16-004
Superior Court Case No. CF0200-15

OPINION

Cite as: 2017 Guam 13

Appeal from the Superior Court of Guam
Argued and submitted October 18, 2016
Dededo, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; and KATHERINE A. MARAMAN, Associate Justice.[1]

MARAMAN, J.:

[1] Defendant-Appellant Eugene Benavente Gomia appeals his five-year sentence of incarceration that the trial court imposed following his *nolo contendere* plea to two counts of Second Degree Criminal Sexual Conduct for acts that took place when he was thirteen and fourteen years old. Gomia asks this court to vacate the sentence and remand the matter to the trial court for resentencing. Gomia, now an adult, argues that his sentence is unlawful because it violates his Fifth Amendment right to due process and constitutes an *ex post facto* application of law. Because the trial court did not have proper jurisdiction over the charged offenses against Gomia, however, we reverse and vacate Gomia's Judgment and sentence without reaching the *ex post facto* analysis.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] This case presents a unique set of facts. Gomia was thirteen and fourteen years old at the time the criminal acts, to which he pleaded *nolo contendere*, occurred. No juvenile delinquency proceedings were brought against him for these acts. However, when he was nineteen years old, Gomia was indicted by a Superior Court Grand Jury on two counts of First Degree Criminal Sexual Conduct ("CSC") and two counts of Second Degree CSC for these acts, which were alleged to have been committed against two victims who were both under the age of fourteen at the time.

[3] Gomia pleaded *nolo contendere* to two counts of Second Degree CSC, in violation of 9 GCA § 25.20(a)(1) and (b), and reserved his right to appeal his sentence and sex offender

[1] The signatures in this Opinion reflect the titles of the Justices at the time this matter was considered and determined.

registration requirement. The trial court held a sentencing hearing on November 16, 2015. The parties discussed the matter raised in this appeal – whether Gomia may be sentenced as an adult or whether Gomia must be sentenced in accordance with the Family Court Act guidelines codified in the Guam Code Annotated ("GCA") under Chapter 5, Title 19. After disclosing the factors that formed the basis for its sentencing, the trial court sentenced Gomia to a five-year incarceration at the Department of Corrections. Judgment was entered, and Gomia timely appealed.

[4] Procedurally, we note that the Judgment states that Gomia pleaded no contest to only a single charge of Second Degree CSC as reflected in the Attorney General's Information lodged with the trial court on September 15, 2015. Record on Appeal ("RA"), tab 47 at 1-3 (Judgment, Mar. 22, 2016). The Judgment also states that the trial court "adjudicated Defendant guilty of a single charge" of CSC, also as reflected in the Attorney General's Information. *Id.* at 2. This does not accurately reflect what occurred in the case. First, the Plea Agreement stated that Gomia will plead no contest to two counts of Second Degree CSC. Gomia's sentencing brief also indicated that Gomia would plead no contest to two counts of Second Degree CSC. Moreover, at the sentencing hearing, the trial court stated that it "has previously also accepted the plea agreement entered into between the parties . . . [and] takes Mr. Gomia's plea of no contest to two separate counts of second degree [CSC] . . . ." Transcript ("Tr.") at 30 (Cont. Sentencing Hr'g, Nov. 16, 2015). Therefore, the Judgment does not appear to properly reflect the accepted plea agreement and agreed upon terms of the plea agreement. We take this opportunity to remind the trial court and parties that care should be taken to ensure that Judgments reflect agreed upon terms.

II. JURISDICTION

[5] This court has jurisdiction over the appeal from a final judgment in a criminal case. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 115-68 (2017)); 7 GCA § 3107(b) (2005); *see also* 8 GCA § 130.15(a) (2005) (allowing defendant's appeal from a final judgment of conviction).

III. STANDARD OF REVIEW

[6] Whether the Superior Court had proper subject matter jurisdiction to proceed against Gomia for the underlying indictment, for crimes allegedly committed when Gomia was thirteen and fourteen years old, is dependent on the authority conferred by the legislature through the Family Court Act. "We apply a *de novo* standard of review when we address issues of statutory construction." *People v. Katzuta*, 2016 Guam 25 ¶ 16 (citing *People v. Joshua*, 2015 Guam 32 ¶ 20).

IV. ANALYSIS

[7] Gomia raises a single issue on appeal. He argues that his five-year sentence is illegal because it is a sentence "which was not available to the [trial] court at the time of the commission of the offense." Appellant's Br. at 2 (June 20, 2016). He contends that if he were prosecuted "soon after the offenses were committed, jurisdiction would have resided in the Family Court . . . ." *Id.* at 3. Gomia submits that because he is being punished as an adult for offenses he committed when he was thirteen and fourteen years old, and because the Family Court Act does not contemplate such a predicament, his Fifth Amendment right to due process was violated. *Id.* at 3-4. Stated differently, Gomia argues that "the punishment amounts to an *ex post facto* application of the law by punishing him with a sentence that no court could have imposed had he been sentenced soon after the offenses were committed." *Id.* at 4. Gomia

ultimately claims that he did not have notice that his actions, committed when he was thirteen and fourteen years old, would hold a punishment that is greater than that available to the Family Division or for any sanction that is beyond his 21st birthday. *Id.* at 6; Appellant's Reply Br. at 2-3 (Aug. 3, 2016).

[8] While Gomia did not directly challenge the subject-matter jurisdiction of the trial court, jurisdiction is a threshold matter that must be addressed. Without proper jurisdiction, all other arguments regarding the trial court's sentencing are futile. "Subject-matter jurisdiction cannot be forfeited or waived and should be considered when fairly in doubt." *Ashcroft v. Iqbal*, 556 U.S. 662, 671 (2009); *see also Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012) ("When a requirement goes to subject-matter jurisdiction, courts are obligated to consider *sua sponte* issues that the parties . . . have not presented."); *People v. San Nicolas*, 2016 Guam 21 ¶ 15 ("Therefore, in Guam, courts must have subject matter jurisdiction in order to be presented with an indictment.").

A. Family Court Act

[9] The Family Court Act, codified at 19 GCA, Chapter 5, was originally established by the Guam Legislature through Public Law 17-12:2 (June 22, 1983). The Act created "a division of the Superior Court which shall be called the *Family Division of the Superior Court*. This division . . . shall be a court of record . . . ." 19 GCA § 5101 (2005). The Family Division is given "exclusive jurisdiction" over any child in Guam "who is alleged to have violated any territorial law . . . ." 19 GCA § 5103(a)(4) (2005). It has been settled by this court that the "Family Court does not have jurisdiction over an individual who was a minor at the time the offense was committed, but was an adult when the individual was actually charged." *People v. Quichocho*, 1997 Guam 13 ¶ 5. The date of charging is therefore the relevant jurisdictional date.

See id. ¶ 8. Gomia, who was a minor at the time of the alleged offenses but an adult at the time of charging, was therefore outside of the jurisdiction of the Family Division by the time he was charged. The court now turns to whether the trial court properly exercised jurisdiction over Gomia as an adult.

[10] Title 19 GCA § 5106 provides the mechanism by which the Superior Court can obtain "adult" jurisdiction over a minor.[2] 19 GCA § 5106(a) (2005). This process requires "certification" by the Family Division to transfer jurisdiction. *Id.* As initially drafted, the law contemplated the certification of minors to be charged as adults only for children sixteen years of age or older at the time the offense was committed. *See* Guam Pub. L. 17-12:2, *codified at* 19 GCA § 5106(a). The legislature, through Public Law 17-27:4, later amended section 5106(a) – the current version – to include specific circumstances under which a child below the age of sixteen at the time the alleged offense was committed may be certified and charged as an adult. The statute reads,

> If a child is sixteen (16) years of age or older at the time he committed the offense for which he is charged, and if the conduct is a misdemeanor or a felony of the third degree, and if the court after full investigation deems it contrary to the best interest of such child or of the public to retain jurisdiction, the court may, in its discretion, certify such child for proper criminal proceedings to any court which would have trial jurisdiction of such offense if committed by an adult. A child who is sixteen (16) years of age or older at the time he committed the offense for which he is charged shall automatically be charged as an adult for any act which would constitute a felony of the first or second degree along with any acts which are misdemeanors or felonies of the third degree which are part of the same scheme of criminal activity as the felony. *If a child is under sixteen years of age at the time he committed the offense for which he is charged, and if the conduct would constitute an offense under 9 GCA Chapter 16 (Homicides),* and if the court after full investigation deems it contrary to the best interest of such child or of the public to retain jurisdiction, *the court may, in its discretion, certify such child for proper criminal proceedings to any court which would have trial*

[2] Section 5106 of the Family Court Act "is not a statute which vests jurisdiction; in fact, it sets forth situations in which the Family Court may lose jurisdiction." *Quichocho*, 1997 Guam 13 ¶ 7.

> *jurisdiction of such offense if committed by an adult*. If a child is certified as an adult, the same judge shall not, in turn preside over the criminal proceedings against such child.

19 GCA § 5106(a) (emphases added); *cf. Bowles v. Russell*, 551 U.S. 205, 212-13 (2007) ("Because Congress decides whether federal courts can hear cases at all, it can also determine when, and under what conditions, federal courts can hear them. Put another way, the notion of subject-matter jurisdiction obviously extends to classes of cases . . . falling within a court's adjudicatory authority[.]" (citations and internal quotation marks omitted)).

[11] In this case, the only circumstance provided for by the legislature for when a child under the age of sixteen may be certified as an adult is for the offense of homicide. Section 5106(a), therefore, limits the classes of cases that fall within and outside of the Superior Court's adjudicatory authority. The legislature's inclusion of homicide, *and only homicide*, as the type of offense for which a minor under the age of sixteen may be tried in an adult criminal proceeding leads us to conclude that the legislature intentionally excluded all other types of offenses. *Expressio unius est exclusio alterius*; *see also Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73, 80 (2002) ("[E]xpressing one item of an associated group or series excludes another left unmentioned."); *N.L.R.B. v. SW Gen., Inc.*, 580 U.S. ___, 137 S. Ct. 929, 940 (2017) ("The *expressio unius* canon applies only when 'circumstances support[] a sensible inference that the term left out must have been meant to be excluded.'" (alteration in original) (quoting *Echazabal*, 536 U.S. at 81)). The *expressio unius est exclusio alterius* canon applies here.

[12] In this case, Gomia is alleged to have committed the offense of criminal sexual conduct when he was thirteen and fourteen years old. The People did not pursue delinquency proceedings against him in the Family Division of the Superior Court while he could still have been brought under its jurisdiction. Applying the traditional rules of interpretation, minors under

sixteen who commit non-homicide offenses fall outside the jurisdiction of *both* the Superior Court *and* the Family Division if they are not charged before reaching the age of majority. This nuance may have been specifically contemplated by the legislature, *i.e.*, to recognize the youthful characteristics of children, *see, e.g.*, *Miller v. Alabama*, 567 U.S. 460, 472 (2012) ("[T]he distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes."), or it may have been an uncontemplated distinction.

[13] Nonetheless, the legislature has spoken and included only homicides in the category of offenses the Superior Court, when sitting as a court of general jurisdiction, may obtain jurisdiction over when the offender is under sixteen years of age. This court is constrained by that language. It is not within the province of the courts to stretch the law to apply to circumstances clearly not provided for by the legislature; to the contrary, decisions of whether to extend the law to cover circumstances such as this lie solely within the authority of the legislature. *See Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.").

B. *Ex Post Facto* and Statute of Limitations Arguments

[14] The only issue Gomia actually raises on appeal is that to punish him as an adult for offenses he is alleged to have committed when he was thirteen and fourteen years old violates his right to due process and amounts to an *ex post facto* application of the law. As this court has concluded that the trial court lacked subject matter jurisdiction, we need not consider these arguments. Irrespective of any potential time bar, under these circumstances, the charges are jurisdictionally barred.

V. CONCLUSION

[15] For the reasons set forth above, we **REVERSE** and **VACATE** the Judgment of Conviction.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
ROBERT J. TORRES
Chief Justice